

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 1:06-cr-153
	)	
v.	)	Honorable Gordon J. Quist
	)	
TONIATUH SANCHEZ-BALBUENA,	)	
	)	
Defendant.	)	
	)	

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**REPORT AND RECOMMENDATION**

Pursuant to W.D. MICH. L.CR.R. 11.1, I conducted a plea hearing in the captioned case on August 1, 2006, after receiving the written consent of defendant and all counsel. At the hearing, defendant TONIATUH Sanchez-Balbuena entered a plea of guilty to count 1 of the Indictment charging him with illegal reentry subsequent to deportation after an aggravated felony conviction, in violation of 8 U.S.C. §§ 1326(a), (b)(2). On the basis of the record made at the hearing, I find that defendant is fully capable and competent to enter an informed plea; that the plea is made knowingly and with full understanding of each of the rights waived by defendant; that it is made voluntarily and free from any force, threats, or promises; that the defendant understands the nature of the charge and penalties provided by law; and that the plea has a sufficient basis in fact.

I therefore recommend that defendant's plea of guilty to count 1 of the Indictment be accepted and that the court adjudicate defendant guilty of the charge. Acceptance of the plea, adjudication of guilt, and imposition of sentence are specifically reserved for the district judge.

With regard to count 2 of the Indictment, falsely representing a social security number, in violation of 42 U.S.C. § 408(a)(7)(B), defendant tendered a guilty plea, but I recommend that the plea not be accepted, as the information presented to the court at the plea hearing did not establish the element of *scienter* beyond a reasonable doubt. I recommend that proceedings continue on count 2, unless the Government elects to dismiss it or is able to present the court with a sufficient factual basis for a guilty plea, as required by Fed. R. Crim. P. 11(b)(3).

The Clerk is directed to procure a transcript of the plea hearing for review by the District Judge.

Dated: August 2, 2006

/s/ Joseph G. Scoville  
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U.S. Magistrate Judge

#### **NOTICE TO PARTIES**

You have the right to de novo review of the foregoing findings by the district judge. Any application for review must be in writing, must specify the portions of the findings or proceedings objected to, and must be filed and served no later than ten days after the plea hearing. *See* W.D. MICH. L.CR.R. 11.1(d). A failure to file timely objections may result in the waiver of any further right to seek appellate review of the plea-taking procedure. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Neuman v. Rivers*, 125 F.3d 315, 322-23 (6th Cir.), *cert. denied*, 522 U.S. 1030 (1997); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).